

1 The Honorable Thomas S. Zilly

*el* FILED \_\_\_\_\_ ENTERED  
 LODGED \_\_\_\_\_ RECEIVED  
 JUN 07 2002 PM

AT SEATTLE  
 CLERK U S DISTRICT COURT  
 WESTERN DISTRICT OF WASHINGTON  
 BY DEPUTY

2 CV 01-00235 #00000113

3  
 4 IN THE UNITED STATES DISTRICT COURT  
 5 FOR THE WESTERN DISTRICT OF WASHINGTON  
 6 AT SEATTLE

7 BAINS LLC d/b/a Flying B, )  
 8 Plaintiff, ) No C01-0235Z  
 9 v ) JOINT INSTRUCTIONS  
 10 ARCO PRODUCTS COMPANY, a division of )  
 11 Atlantic Richfield Co., a Delaware Corporation, )  
 12 Defendant. )  
 13  
 14

15 Pursuant to Local Civil Rule 51, the parties submit the following agreed upon Joint  
 16 Instructions The parties incorporate the Court's Proposed Instructions by reference, and adopt  
 17 the Court's Proposed Instruction numbers for additions and changes to the Court's Proposed  
 18 Instructions  
 19

20 DATED this 7<sup>th</sup> day of June, 2002

21  
 22 Davis Wright Tremaine LLP  
 23 Attorneys for ARCO Products Company

24 By

25 *Holly M. Hearn*  
 26 Michael Reiss, WSB# 10707  
 27 Holly M. Hearn, WSB# 26795

28 FINAL JOINT INSTRUCTIONS - 1  
 F:\DOCS\58382\1\FINAL JOINT INSTRUCTIONS.DOC  
 Seattle

29 Davis Wright Tremaine LLP  
 LAW OFFICES  
 2600 Century Square 1501 Fourth Avenue  
 Seattle Washington 98101-1688  
 (206) 622-3150 Fax (206) 628 7699

113

Budge & Heipt, P.L.L.C  
Attorneys for Bains LLC

By Holly M. St  
Edwin S. Budge, WSBA # 24182 via  
Erik J. Heipt, WSBA # 28113 telephone  
approval

**FINAL JOINT INSTRUCTIONS - 2**  
F:\DOCS\58382\1\FINAL JOINT INSTRUCTIONS.DOC  
Seattle

**Davis Wright Tremaine LLP**  
**LAW OFFICES**  
2600 Century Square 1501 Fourth Avenue  
Seattle Washington 98101-1688  
(206) 622-3150 Fax (206) 628-7699

## TABLE OF CONTENTS

Number	Title	Source	Page No.	Party Proposing
11	Breach of Contract – Elements and Burden of Proof	Calif. Model Jury Instructions 10.85	4	Both
		(introductory paragraph slightly modified for clarity)		
20	Jury to Use Only Official English Translation	9 <sup>th</sup> Cir. Civil Jury Instr 3.4 (2001).	5	Both
21	Use of Interrogatories of a Party	9 <sup>th</sup> Cir. Model Jury Instr 2 13 (2001).	6	Both
22	Distinct Race	<i>Jatoi v Hurst-Euless-Bedford Hospital Auth</i> ,	7	Both
		8907 F 2d 1215 (5 <sup>th</sup> Cir. 1987)		

## **INSTRUCTION NO. 11**

## **BREACH OF CONTRACT – ELEMENTS AND BURDEN OF PROOF**

The plaintiff Flying B seeks to recover damages based upon a claim of breach of contract. An unjustified failure to perform a contract is a breach. Plaintiff has the burden of proving by a preponderance of the evidence the essential elements of this claim, which are:

- (1) The existence of a contract between the parties;
- (2) Plaintiffs performance,
- (3) Defendant's unjustified failure to perform; and
- (4) Damages to plaintiff caused by the breach.

<sup>1</sup> Cal. Jury Instr. – Civ. 10.85 (9th ed.) (introductory paragraph slightly modified for clarity).

1  
**INSTRUCTION NO. 20**

2  
**JURY TO USE ONLY OFFICIAL ENGLISH TRANSLATION**

3  
The language of Punjabi has been used by some witnesses at various times during this  
4 trial.

5  
The evidence you are to consider is only that provided through the official court  
6 interpreter. Although some of you many know Punjabi, it is important that all jurors consider  
7 the same evidence. Therefore, you must base your decision on the evidence presented in the  
8 English interpretation. You must disregard any different meaning  
9

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
9<sup>th</sup> Cir. Civil Jury Instr. 3.4 (2001)

## **INSTRUCTION NO. 21**

## **USE OF INTERROGATORIES OF A PARTY**

Testimony is now to be presented to you in the form of answers of the defendant to written interrogatories by the plaintiff. These answers have been given in writing and under oath, before the actual trial, in response to questions which were submitted in writing under established court procedures. The answers are entitled to the same consideration and are to be judged as to credibility and weighed and otherwise considered by you in so far as possible, as if the answers were made from the witness stand.

9<sup>th</sup> Cir. Model Jury Instr. 2.13 (2001)

1                           **INSTRUCTION NO. 22**

2                           **DISTINCT RACE**

3                           For purposes of the federal law that prohibits discrimination in contracting the law  
4                           recognizes East Indians as a distinct race.

24                           *Jatoi v. Hurst-Euless-Bedford Hospital Auth*, 807 F.2d 1215 (5<sup>th</sup> Cir. 1987).

## The Honorable Thomas S. Zilly

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

BAINS LLC d/b/a Flying B, }  
Plaintiff, } } No C01-0235Z  
v. }  
ARCO PRODUCTS COMPANY, a division of }  
Atlantic Richfield Co., a Delaware Company, }  
Defendant } CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein

On this date I caused to be served in the manner noted below a copy of the documents entitled: **JOINT INSTRUCTIONS**, on the following counsel of record:

Edwin S. Budge, Esq.  
Budge & Heipt, P L L C.  
705 Second Avenue, Suite 910  
Seattle, WA 98104

**CERTIFICATE OF SERVICE — 1  
(C01-0235Z)**

F:\DOCS\58382\1\CERTIFICATE OF SERVICE (JOINT INSTRUCTIONS) DOC  
Seattle

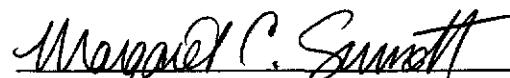
**Davis Wright Tremaine LLP**  
**LAW OFFICES**  
2600 Century Square 1501 Fourth Avenue  
Seattle Washington 98101-1688  
(206) 622-3150 Fax (206) 628-7699

1  
2 BY:

3  
4  
5  
6  
7

	U.S MAIL
X	<b>HAND DELIVERED VIA ABC LEGAL MESSENGER SERVICE</b>
	OVERNIGHT MAIL
	FACSIMILE

8  
9 Dated this 14 day of June, 2002, at Seattle, Washington.  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27



Margaret C. Sinnott